

E-002/GR-91-1 ORDER DETERMINING PRELIMINARY ELIGIBILITY OF THE
SENIOR FEDERATION FOR INTERVENOR COMPENSATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application
of Northern States Power Company
for Authority to Increase its
Rates for Electric Service in
the State of Minnesota

ISSUE DATE: July 5, 1991

DOCKET NO. E-002/GR-91-1

ORDER DETERMINING PRELIMINARY
ELIGIBILITY OF THE SENIOR
FEDERATION FOR INTERVENOR
COMPENSATION

PROCEDURAL HISTORY

On May 20, 1991, the Minnesota Senior Federation (Federation) filed a request for a preliminary determination of eligibility for intervenor compensation in Northern States Power Company's (NSP's) general rate case proceeding.

Commission staff requested supplemental information from the Federation. This information was provided on June 17, 1991. The Commission received comments from NSP regarding the Federation's request on June 21, 1991. NSP expressed no opinion on whether the Federation may be eligible for intervenor compensation and reserved comment until after the parties file final claims for compensation.

This matter came before the Commission on June 25, 1991.

FINDINGS AND CONCLUSIONS

Intervenor Compensation Petitions in General

Minn. Rules, parts 7831.0100 to 7831.0800 set forth the procedures and standards governing requests for intervenor compensation.

Part 7831.0300, subpart 1 sets forth the procedures for requesting intervenor compensation as follows:

An applicant for an award of compensation shall file with the commission a request for compensation. The applicant shall also serve a copy of the request on each known party to the proceeding and shall file with the commission an affidavit of service. The request must be filed as soon after notice of a filing, proceeding, or prehearing conference as is reasonably possible, but at least 75 days after the notice or 30 days before the beginning of evidentiary hearings in the proceeding, whichever occurs later.

Intervenor compensation is awarded only to intervenors who (1) materially assisted the Commission in its deliberation, and (2) could not have participated effectively in the proceeding without the compensation award. The specific factors to consider in making these determinations are set forth in Minn. Rules, part 7831.0800.

Preliminary Determination

A final decision on an intervenor's compensation request is not required until after the Commission issues its final Order in the proceeding. However, Minn. Rules, part 7831.0500, subpart 1 requires the Commission to issue a preliminary determination on whether an applicant is eligible for intervenor compensation. The rule part identifies two standards the Commission must apply in making its preliminary determination. These standards are set forth in this rule part as follows:

A. whether the commission considers the applicant to be an intervenor as defined in part 7831.0100, subpart 9; and

B. whether the applicant has made sufficient showing that, but for an award of compensation for all or part of its intervenor costs, it has insufficient financial resources to intervene and participate fully and effectively in the proceeding, assuming all information in the request filing is true and accurate pending an audit that may be required under part 7831.0700, and pending a decision awarding or denying compensation under part 7831.0800.

Part 7831.0500, subpart 2 identifies additional discretionary factors which the Commission's preliminary determination may address. These factors include (1) whether the applicant has demonstrated its ability to materially assist the Commission in its proposed statement of participation; and (2) whether the application lists duplicate positions taken or presentations made by intervenors, or whether they may be more economically or efficiently presented under common representation.

The Commission may also, in its discretion, (1) recommend use of

common legal representation or expert witnesses in cooperation with other applicants or participants; (2) provide a listing of other known applicants and participants advocating or proposing substantially similar positions or presentations; (3) point out any unrealistic expectations for compensation; or (4) address any other information that may affect an applicant's claim for an award of compensation for intervenor costs.

The preliminary determination does not guarantee compensation; it merely creates a presumption for or against an award of compensation with respect to the factors addressed in the preliminary determination. The intervenor must file a claim for compensation after the Commission issues its final Order in the proceeding. At that point the Commission makes its final determination.

The question presented in this matter is whether the Senior Federation has met the standards required to obtain a preliminary determination of eligibility for intervenor compensation. The Commission finds and concludes that it has.

Timely Filing

Minn. Rules, part 7831.0300, subpart 1 requires applicants for intervenor compensation to file their requests "as soon . . . as is reasonably possible, but at least 75 days after notice [of the rate case filing] or 30 days before the beginning of the evidentiary hearings in the proceeding"

The Federation filed its petition for intervenor compensation on May 20, 1991, exactly 30 days before the start of evidentiary hearings in this proceeding on June 19, 1991. The Commission, therefore, finds that the Federation has made a timely request for intervenor compensation. However, the Commission is concerned that the Federation waited until the last possible date to file its request, even though NSP had filed its request for a rate increase almost four months earlier on January 28, 1991. The Commission encourages intervenors in the future to file their requests "as soon as is reasonably possible" after the rate case is initiated, as the rules require.

Intervenor Status

As set forth above, eligibility for intervenor compensation is conditioned in part on a finding that the petitioner is, in fact, an intervenor. Minn. Rules, part 7831.0100, subpart 10 defines intervenor as:

a person who is entitled or permitted by law, or permitted under rule of the commission or by order of the presiding officer, to intervene in a proceeding

The presiding officer in a rate case proceeding is the Administrative Law Judge (ALJ) assigned by the Office of Administrative Hearings. The ALJ assigned in this case issued a Prehearing Order on April 19, 1991, in which he identified the Federation as an intervenor in the NSP rate proceeding. Therefore, the Federation qualifies as an intervenor for purposes of its petition for intervenor compensation.

Insufficient Financial Resources

As set forth above, eligibility for intervenor compensation is conditioned on a finding that the applicant is financially unable to participate fully and effectively in the proceeding without compensation for the costs it incurs intervening. In its preliminary determination of eligibility for compensation, the Commission must determine whether the applicant has made a "sufficient showing" that compensation is necessary to the full, effective participation of the applicant.

The Federation is a nonprofit organization consisting of 11 regional federations of 34,000 members. The Federation has indicated its intent to address residential rate design matters, focusing primarily on attempting to persuade the Commission to incorporate an inverted block rate structure. The Federation has budgeted \$2,525.55 for this purpose, based on its cost projections for mileage, clerical services, copying, postage and the services of its representative, Mr. Elmer Scott.

The Federation anticipates 1991 revenues and expenses of \$494,306 and \$488,184 respectively, leaving a year-end balance of \$6,122. The Federation maintains that the balance is needed to meet its other obligations, including the cash flow needs of its newspaper and its general operating budget. The Federation asserts further that it would have to curtail its grant obligations in its Health Care Access Program to intervene in this proceeding without compensation.

The Commission finds the evidence of the Federation's financial position sufficiently convincing to support a preliminary determination that the Federation has insufficient financial resources to participate fully and effectively in this proceeding without compensation. The Federation provided a detailed balance sheet to identify its financial obligations and revenues. The Commission is persuaded at this point that the Federation's projected fund balance is needed to meet these other obligations and would not be available to pay the entire cost of its intervention.

In light of these considerations, the compensation requested by the Federation appears to be necessary. The Commission notes, however, that the preliminary finding in this Order merely

creates a presumption of financial eligibility for compensation. This presumption is rebuttable. The Federation's financial information for 1991 is subject to audit and further review by the Commission and a final decision on eligibility for compensation will not be rendered until the conclusion of the proceeding.

The Commission makes no findings on the discretionary considerations under Minn. Rules, part 7831.0500, subpart 2.

ORDER

1. The Minnesota Senior Federation's petition for a preliminary determination of eligibility for intervenor compensation in this docket shall be granted as to the mandatory criteria set forth in Minn. Rules, part 7831.0500, subpart 1.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)